

SECTION II

ADMINISTRATION, PROCEDURES AND ENFORCEMENT

(Article 17-8 of the Brighton Municipal Code)

1. **Purpose.** (Section 17-8-10 of the Brighton Municipal Code)

The purposes of this section, as it may be amended, are to provide efficient and timely public review of all land use matters; to ensure fairness and due process in public hearings; to administratively separate the enforcement of the *Land Use and Development Code* from the process of adopting legislative land use and development ordinances; provide for an informal and efficient method of enforcing the requirements of the *Land Use and Development Code*; and to provide information and establish methods for the implementation of the *Land Use and Development Code*. These methods include procedures and requirements for reviewing land use applications, plans, and permits and amending the *Land Use and Development Code*. Descriptions about the applicable City review authorities are also included to describe the jurisdiction and responsibilities of the reviewing authorities involved in the public review process.

2. **Reviewing Authorities.** (Section 17-8-20 of the Brighton Municipal Code)

A. **CITY COUNCIL.** The City Council shall make the final decision, subject to appeal to the appropriate District Court regarding:

- 1) Annexations,
- 2) Changes of zone district boundaries,
- 3) Amendments to the *Land Use and Development Code*,
- 4) Approval of the terms and conditions of development agreements,
- 5) Exemptions by resolution from the terms and conditions of the Subdivision Regulations,
- 6) Appeals of Planning Commission action on a Preliminary Plat,
- 7) Final Plats, including referral of amendments thereto by the Director,
- 8) Conditional Uses,
- 9) Designation of historic landmarks and districts,
- 10) Appeals from the Board of Adjustment on Special Uses and Variances, and
- 11) All other matters as specified in the *Land Use and Development Code*, ordinances, rules and regulations of the City, as amended.

The City Council shall ratify, by resolution, the following:

- 1) The Comprehensive Plan, amendments to the Comprehensive Plan, master plans and master plan amendments.

B. **PLANNING COMMISSION.** It is the function of the Planning Commission to serve as both an advisory board to the City Council on major planning and land use issues, and to act as the final agency decision maker on certain land use matters. For these purposes, it may engage in cooperative and joint planning programs with the City Council; officers and departments of the City; other planning agencies, officials, and representatives of other governmental units; and, with private agencies and organizations. The Planning Commission shall have jurisdiction to review and make recommendations to the City Council over the following matters:

- 1) Changes of zone district boundaries,
- 2) Amendments to the *Land Use and Development Code*,
- 3) Exemptions from the terms and conditions of the Subdivision Regulations, and
- 4) All other matters as specified in the *Land Use and Development Code*, ordinances, rules and regulations of the City, as amended.

The Planning Commission shall have final decision jurisdiction over the following matters:

- 5) The Comprehensive Plan, amendments to the Comprehensive Plan, master plans and master plan amendments, and
- 6) Preliminary Plats, subject to appeal to the City Council.

C. BOARD OF ADJUSTMENT. The functions of the Board of Adjustment are to act as the final agency decision maker in certain land use matters, to interpret the terms and conditions of the *Land Use and Development Code*, hear appeals from any order, requirement, decision, or determination made by a City official or employee charged with enforcement of the regulations of the *Land Use and Development Code*. The Board of Adjustment shall have jurisdiction to review and make decisions over the following matters:

- 1) Variances, and
- 2) Special Uses.

The Board of Adjustment shall have jurisdiction to review and hear appeals in the following matters:

- 1) Building Permit Review approvals or denials,
- 2) Any order, requirement, decision, or determination made by a City official or employee charged with enforcement of the regulations of the *Land Use and Development Code*, and
- 3) Referrals of Temporary Use Permits.

D. CITY MANAGER. The functions of the City Manager, or the Manager's designee or representative, are to act as the final agency decision maker in certain land use matters. Unless otherwise designated in writing by the City Manager, the Manager's designee for all matters related to the *Land Use and Development Code* shall be the Director of the Community Development Department, as more fully set forth in Section E. below. The City Manager, or the Manager's designee shall have jurisdiction over the following matters:

- 1) Enforcement of all terms and conditions of the *Land Use and Development Code*,
- 2) Cancellation of a special use or variance when construction is not commenced within six (6) months,
- 3) Set public hearing dates for the City Council,
- 4) Review limitations and approval of acceptable temporary uses,
- 5) Nominate historic structures and districts for historic designation,
- 6) Certificates of Appropriateness for historic structures,
- 7) Relocation and demolition permits for historic structures, and
- 8) Building Permit Review as required in the Residential Design Standards.

E. DIRECTOR. The following terms used in the *Land Use and Development Code*, "City Planner," "Planning Department," "Community Development Director," "Brighton Planning Division," "Planning Division," and including the designee of the City Manager as specified

in Section D. above, are deemed to be the Director of the Community Development Department, or the Director's designee. The Director shall have jurisdiction to act on the following land use matters:

- 1) Prepare and provide land use and development applications and forms,
- 2) Oversee the application, review and administration processes for land use and developments,
- 3) Determine additional information and materials required for land use applications and reviews,
- 4) Waive submittal requirements, with appropriate justification supporting the waiver,
- 5) Presentations to the Planning Commission and City Council,
- 6) Set the date for hearings before the Planning Commission,
- 7) Minor Subdivision Final Plat,
- 8) Plat corrections,
- 9) Plat Amendments,
- 10) Uses-by-right,
- 11) Interpretation of the *Land Use and Development Code*, and
- 12) Building Permit appeals.

F. **DEVELOPMENT REVIEW COMMITTEE.** The Development Review Committee shall have jurisdiction to review and make recommendations to the City Manager, Director, Department of Community Development, Planning Commission and/or the City Council on the following matters:

- 1) Zone changes,
- 2) Plans submitted for zone change, conditional use, planned unit development, subdivisions, Uses-by-right, new development and major construction or additions,
- 3) Applications and plans referred by the Director, and
- 4) Adoption or amendment to the Comprehensive Plan, master plan, and any other plan or policy as deemed necessary by the Planning Commission, City Council or the City Manager.

G. **HISTORIC PRESERVATION COMMISSION.** The Historic Preservation Commission shall have principal responsibility for matters of preservation of the historical and architectural heritage of the City and the implementation of Article 17-52, **Historic Preservation**; and it shall have the following powers, duties and rule making authority, subject to approval by the City Council:

- 1) Advise the City Council on matters related to preserving the cultural resources and historic character of the City,
- 2) Initiate designation of historic structures and districts,
- 3) Conduct surveys and inventories of the cultural resources of the City, including identification of historic sites, structures, buildings and districts,
- 4) Review cultural resources nominated for designation as an historic landmark or historic district and recommend that the City Council either approve, approve with conditions or deny the nomination for designation,
- 5) Review and make decisions on applications for Certificates of Appropriateness

related to alterations, construction, repair, moving and/or demolition to a designated historic landmark or historic district, and

- 6) Perform all actions and functions as authorized or directed by the Brighton Municipal Code, as amended, and all other ordinances, rules, regulations, policies and procedures of the City of Brighton related to historic preservation.

3. **Procedures.** (Section 17-8-30 of the Brighton Municipal Code)

A. **PURPOSE.** The provisions of this section describe the procedures and processing requirements for filing land use and development applications of any nature for approvals and permits required in Chapter 17, *Land Use and Development Code*. If the provisions of this section are in conflict with any application, processing, notice, hearing or other procedural requirements of Chapter 17, the provisions of this section shall apply.

B. **FILING APPLICATIONS.**

- 1) Applications for amendments to the Comprehensive Plan, land use and development approvals, amendments to approvals, zoning code amendments, permits, modifications of permits and other matters pertaining to the *Land Use and Development Code*, as the same may be amended from time to time, shall be filed with the Community Development Department, on a City application form, together with all fees, plans, maps, drawings, tables, written information and any other information required by the ordinances, Director, Planning Commission or City Council. The application shall be made by the owners of the property, or lessees with the written agreement of the owners of the property, persons who have contracted to purchase the property contingent upon their ability to acquire the necessary permits, or the agents or representatives of such persons; or the Director, City Manager, City Council, Planning Commission, Historic Preservation Board, or a City department, division, or other appointed board.
- 2) The Director, Planning Commission or City Council may request information and documentation in addition to the submittals identified in subsection 17-8-30(C) which they find necessary to review the land use application or permit according to the criteria of the section under consideration. Conversely, some of the information normally required may not be necessary to determine conformance with review criteria. Upon receipt of a written request justifying the deletion of required information and explaining how the review criteria for the item under review will be met, the Director may waive any submittal requirement. The criterion for a waiver shall be that the review process does not require this information. This request shall be made prior to filing of the application.
- 3) An applicant for a project which would require the filing of more than one application for land use approval or permit may file all related applications concurrently and pay all applicable fees. Processing and review would be concurrent and the final decision on the project would be made by the highest level of review authority.
- 4) **Pre-application Conference.** The applicant is required to contact the Community Development Department and, if required, to attend a pre-

application conference for the following development application types:

- a. Annexation;
- b. Comprehensive Plan, master plans and master plan amendments;
- c. Zone changes;
- d. Concept, overall development and minor development plans;
- e. Conditional uses;
- f. Subdivision plats;
- g. Special uses and variances,
- h. Uses-by-right, and
- i. Right of way vacation requests.

The purpose of the pre-application conference is to provide the staff of the Community Development Department with an opportunity to:

- a. Identify and communicate specific planning issues which might be associated with the project to the applicant,
 - b. Determine whether the project should be forwarded to the Development Review Committee or other interested departments or agencies,
 - c. Determine whether a neighborhood meeting should be held prior to filing the application,
 - d. Advise the applicant of submittals required to be made with the application and
 - e. Respond to questions raised by an applicant.
- 5) Any development application as noted in subsection B.4) above, that meets any of the following criteria shall be deemed to be withdrawn and the review formally terminated:
- a. The applicant requests that the application be withdrawn, or
 - b. The applicant fails to respond and/or submit revised plans, reports or correspondence to the Community Development Department for more than a one hundred eighty (180) day period following a request from the Director or the Director's designee.

C. **SUBMITTALS.** Applications for any approval, permit, land use, development or other action or decision sought pursuant to the *Land Use and Development Code* will not be accepted or thereafter processed unless all required supporting documents and submissions have been received by the Community Development Department. The required submissions for the type of review and approval sought shall be specified on the application form provided by the City, and other requirements of the Director, City Manager, Planning Commission or City Council. The Director, in the Director's sole discretion, may waive the submission of any document upon the prior request of the applicant, as more fully provided in subsection B)(2) **Filing Applications** above.

- 1) **Land Use and Development Application.** A completed application, the form of which shall be furnished by the Community Development Department (as may be updated from time to time) which includes property related information; specification of required submittals; contact information for the applicant, consultant, and property owner; and such other information as required.
- 2) **Questionnaire.** A completed questionnaire, the form of which shall be furnished

- by the Community Development Department (as may be updated from time to time), which poses questions specifically related to the approval, permit, land use, development or other action being requested.
- 3) **Fees.** Such fees shall be as set forth in the City Council's Annual Fee Resolution in effect at the time of application. The fee shall not be refunded in whole or in part should the application be denied or withdrawn.
 - 4) **Proof of Ownership.** A current title insurance policy or title commitment issued no more than thirty (30) days prior to the date of application.
 - 5) **Improvement Location Certificate.** An official document prepared by a surveyor showing the boundaries of the property and structures or improvements located on a property, along with any easements (if applicable) and encroachments from adjacent properties.
 - 6) **Site Development Plan.** A site development plan shall include, at a minimum, such information as may be required by the application or the Director, which may include the following:
 - a. The location and size of all existing buildings, proposed additions thereto, proposed buildings, and/or building envelopes,
 - b. Existing and/or proposed landscaping areas, and drainage areas,
 - c. Setbacks, distance between structures, and adjacent property lines,
 - d. Existing and/or proposed easements, streets, alleys, ingress/egress points, off-street parking spaces and drive aisles, areas for loading/unloading, areas for trash removal, outside storage areas (if allowed),
 - e. Existing and/or proposed fencing and screening, including the height of all existing and/or proposed fencing and screening; and,
 - f. Such other documentation as required by the application or the Director which is reasonably related to the requested approval, permit, land use, development or other action.
 - 7) **Neighborhood Notice.** A list of the names and addresses of all property owners within a minimum of three-hundred (300) feet as shown by the records of the county assessor no more than seven (7) calendar days prior to the date of the application. The Director may limit or increase the distance for determining the number of names and address for notification.
 - 8) **ALTA/ACSM Land Title Survey.** A land survey prepared and certified by a registered Professional Land Surveyor (PLS).
 - 9) **Proof of Water and Sewer Service.** Required only in circumstances in which the City is not the provider.
 - 10) **Engineered Drainage Plan and Report.** Required if new, repaired or replacement of drainage facilities are needed for the development of the property.
 - 11) **Soils and Geologic Report.** Required if deemed necessary by the Director, or the Director's designee.
 - 12) **Architectural Elevations.** Architectural elevations (front, rear, and side) for all new structures or additions made to existing structures, including a description or sample of the exterior construction materials and paint colors.

- 13) **Photometric Plan and Lighting Specifications.** The photometric plan shall be displayed in foot candles and shall include an attachment setting forth the lighting specifications proposed for the development and shall account for all exterior lighting (i.e., building mounted and light poles).
- 14) **Utility Plan.** The nature and extent of the utility plan shall be determined by the Director, or the Director's designee.
- 15) **Complete Engineering Plans.** Required if any public infrastructure is required for the development.
- 16) **Traffic Impact Study.** Required if the proposed approval, permit or development will increase traffic generation by one-hundred (100) trips or more, per day.
- 17) **Landscape Plan.** The landscape plan shall include the items required in the Site Development Plan, and at a minimum:
 - a. The location and/or arrangement of proposed plantings;
 - b. Existing natural vegetation to be incorporated into formal planting areas;
 - c. Sight distance triangles (for all driveway locations and across the corners of properties at street intersections);
 - d. Cross-section/s of typical planting and berm areas;
 - e. A table denoting the required landscape area and the total area in landscaping (in square feet) provided for the site;
 - f. A planting schedule setting forth the plant type (both common name and botanical name), the amount/number of each type of plant, along with the totals for trees, shrubs, flowers, and grass plantings, caliper size for deciduous trees, height of conifer trees, spacing of proposed planting, gallon sizes of shrubs and groundcover; physical specifications of plants, and the planting and staking drawings and details for deciduous and evergreen trees.
- 18) **Irrigation Plan.** The irrigation plan shall include, at a minimum, the location, size, and specifications of water source(s), water mains, meters, valves, and the controller; identification of watering zones; temporary water irrigation systems (if necessary); specifications of irrigation equipment identified by manufacturer's name and equipment identification number; and an approved backflow prevention device. This submittal item may be waived by the Director if the applicant submits a proposal with appropriate guarantees acceptable to the Director, agreeing that the irrigation plans will be submitted prior to issuance of a building permit.
- 19) **Annexation Plat.** A map showing: the area to be annexed, the area contiguous to existing City boundaries, ownership information for the area to be annexed and adjacent parcels, along with applicable signature blocks, general notes, and a legal description of the area to be annexed.
- 20) **Vicinity Map.** A map showing the subject property and all roadways, which are adjacent to, and within one mile of the subject property.
- 21) **Additional Information.** Such additional information as may be required by the Director, City Manager, Planning Commission or City Council in order to review and recommend the requested approval, permit, land use, development or other action.

D. **REVIEW.** The Director, or Director's designee, shall determine the application and all

required submittals are complete. If the application is deemed incomplete, the applicant shall be notified as to the items needed to complete the application, including incomplete or missing submittals.

- 1) Each complete application will be reviewed by the Director, and depending on the nature of the application, refer the application to the Development Review Committee, and any agency that may require review and comment regarding the application including by illustration and not limitation: utilities, school districts, health departments, ditch companies, special districts; and, departments of the federal, State and county governments for review and comment. Each such reviewer shall be requested to submit written reports or comments on the application. Thereafter, the applicant shall be advised of any comments or requirements of the reviewers. The applicant may choose to revise the plans in accordance with the comments or requirements, or may choose to move forward with the application as submitted.
- 2) After receipt of the responses of the reviewers and any changes by the applicant, the Director will review the application and accompanying information; responses from the Development Review Committee; comments from other departments, agencies and governments; and, comments from interested persons and thereafter prepare a report and recommendation for presentation at public hearings held by the applicable reviewing agencies.
- 3) The staff and Development Review Committee may discuss the application and issues with any interested party at any time during the approval process.
- 4) After an application is submitted to the Community Development Department, the Director may reject the application as contrary to the provisions, conditions, requirements and criteria of the *Land Use and Development Code*.
- 5) The report of the Community Development Department shall be provided to the applicant, the reviewing authorities, and upon request, to other interested parties.
- 6) Public hearings before reviewing authorities shall be set and notice thereof given as provided in subsection 17-8-30(G) below.

E. **FEES.** The City Council shall establish a schedule of fees for applications of land use approvals, permits, land use, development and other matters pertaining to this Chapter 17. *Land Use and Development Code* in the Annual Fee Resolution. Review shall not begin on any application until all applicable fees have been paid in full, and the City is not required to continue processing any application unless its fees are paid in full. Failure to pay the applicable fees is grounds for rejection or denial of the application. The fees shall not be refunded should the application be denied, or withdrawn as more fully provided in subsection B)(5) **Filing Applications** above.

F. **NOTICE.** When notice is required to be mailed, posted or published by the *Land Use and Development Code* or Colorado law, the following shall apply:

- 1) The notice shall contain a brief description of the approval, land use, development, permit or other action for which the notice is given, a description of the subject property sufficient to advise the public of the location thereof, the purpose of the hearing, date, time, place, reviewing authority and the office and telephone number at the City where further information is available for inspection.
- 2) **Publication-Notice.** A notice of a public hearing may be made in a newspaper,

publication, general mailing, or other source of general public information whether in print or electronically, within the City of Brighton as designated for the purpose by the City Council. Such notification shall occur at least once no less than fifteen (15) calendar days prior to the public hearing, provided, the Director, City Manager or City Council may direct that additional publications be made and the timing thereof.

- 3) **Property Owner Notice.** Written notice shall be sent by regular mail, postage prepaid, to each property owner(s) as determined from the list provided by the applicant as required above, or as determined by the Director, at least fifteen (15) calendar days prior to the public hearing. The information contained in said official notice shall be consistent with the information as set forth in F.(1) above. The Director, City Manager, Planning Commission, or City Council may direct that notwithstanding other requirements, notification letters be sent to surrounding property owners to provide notice of proposed developments based upon the scope of the potential external impacts of the proposed land use, development or project. The extent of the mailed notification letters shall be determined by the Director, City Manager, Planning Commission or City Council.
- 4) **Posting of Property.** If posting is required by the *Land Use and Development Code*, the Director, City Manager, Planning Commission or City Council, public notice signs shall be placed upon properties under consideration as provided below. The posting is to provide opportunity for public notice to owners of surrounding properties and the general public. Unless otherwise specified, such notice shall be posted on the premises in question at least fifteen (15) calendar days prior to the public hearing.
 - a. All required signs shall be placed along the perimeter of the subject property in locations which are visible from adjacent public ways. Posting may be outside the actual boundary of the project, if in the opinion of the Director, the alternative posting location offers more visibility for public notice.
 - b. The information contained in said posting shall be consistent with the information as set forth in the subsection F.(1) above, excluding a description of the subject property, the purpose of the hearing, and the reviewing authority. The purpose of the posting is to inform the general public of the specific time, date and location of the public hearing.
 - c. In instances in which there are more than five (5) abutting and contiguous properties that are under separate ownership, and are part of the same application, only one (1) sign shall be required, which sign shall be posted in the most visible location from an adjacent public way at the discretion of the Director.
- 5) **Notice For Additional Hearing Dates.** If the notice set forth in subsections F.(2) **Publication-Notice**, F.(3) **Mail**, and/or F.(4) **Posting**, above, has been provided, no further notice is required if the reviewing authority adjourns or continues the hearing to a certain date.
- 6) **Neighborhood Meetings.** The Director may, at any time during the review and approval process, require that a neighborhood meeting be held to discuss proposed development projects. The purpose of a neighborhood meeting is to allow neighborhood residents to communicate to the City and the applicant any

issues, concerns or comments that they might have regarding a proposed development project at the discretion of the Director. Neighborhood meeting(s) may be held during the pre-application stage, internal review stage and/or final disposition stage.

- 7) **Development Sign.** Within thirty (30) calendar days of zoning approval by the City Council, the developer and/or landowner shall cause to have erected on the zoned property a sign providing information pertaining to the development and zoning of the property. At a minimum, the following information, conditions, and specifications are required:
- a. The sign shall be at least fifteen (15) square feet in size, and no more than twenty (20) square feet in size, with a maximum height of eight (8) feet;
 - b. The sign shall be placed on the property so as to be visible to the public from nearby streets, trails, and/or adjacent public areas. Where the property abuts public right-of-way along more than one of its property lines, a sign shall be placed at each such location;
 - c. At a minimum, the following information shall be included within each development sign:
 - 1) The zoned property lies within the municipal boundary of the City of Brighton,
 - 2) A map, outline, or site plan of the zoned property as approved by the City Council during the zoning process,
 - 3) The zoning that has been approved,
 - 4) Name of the developer and/or landowner of the zoned property, and an address, phone number and/or web site where they might be contacted for project information, and
 - 5) A statement that additional information may be obtained from the City of Brighton Planning Division at a current telephone number and the address of the City's website.
 - d. The sign shall remain on the property until such time as the property has an approved final subdivision plat or construction has commenced on the property.
 - e. The Director, Planning Commission or City Council may require the erection of a development sign for other land use and development approvals in accordance with the requirements of this subsection F.(7).

G. **HEARINGS/REVIEW.** Hearings as provided for in the *Land use and Development Code* shall be held at the date, time, and place as specified in the public notice thereof. Opportunity shall be provided for all interested parties to express their opinions and provide evidence regarding the matter under consideration.

- 1) Hearings, considerations and reviews for approval shall be conducted in accordance with the rules of procedure of the reviewing authority.
- 2) That portion of the hearing at which public comment and participation is received may be continued provided that prior to the adjournment or recess of the hearing, a clear announcement is made specifying the date, time, and place to which public comment and participation will be continued.
- 3) A reviewing authority may close the public hearing and if it is determined by the reviewing authority, in its reasonable discretion, that additional information,

testimony or evidence is necessary, proper, or would otherwise assist the reviewing authority in making its decision, the matter may be tabled and continue the hearing taking the matter under advisement for a period not to exceed thirty (30) calendar days. The reviewing authority shall use its best efforts to re-schedule the continued hearing within thirty (30) calendar days. Unless otherwise agreed to in writing by the applicant, if the reviewing authority fails to act within the thirty (30) day period, the action of the reviewing authority shall be deemed to be a recommendation of denial or a final denial.

- 4) Following the close of the public hearing, the reviewing authority with final authority shall by motion, resolution or ordinance; approve, approve with conditions, or deny the application. Following the close of the public hearing, a reviewing authority with authority to make recommendations to another reviewing authority, shall by written resolution, recommend approval, approval with conditions, or denial of the application.
- 5) The reviewing authority shall set forth in its motion, resolution or ordinance findings of fact that constitute the basis for its decision together with conditions of approval considered necessary to mitigate impacts and protect the public health, safety, and welfare.
- 6) A reviewing authority may require or recommend such conditions for any matter which are reasonable and necessary in order to further the purpose of the *Land Use and Development Code*. Violations of conditions made a part of the terms under which any matter is decided, shall be deemed a violation of the *Land Use and Development Code*.

H. APPEALS.

- 1) Appeals of final decisions under the *Land Use and Development Code* shall be to the District Court of Adams County or Weld County (depending on the location of the subject property), pursuant to C.R.C.P. 106 or other Colorado law.
- 2) **Appeals.** Any person aggrieved by an appealable administrative decision made by the Director, City Manager or other officer of the City or by a board or commission from which appeals may be taken, may file a formal appeal application with the Community Development Department within ten (10) days from the date of mailing, posting or personal service of notice of the decision. The appeal shall be placed on the agenda of the next regularly scheduled meeting of the Planning Commission or City Council occurring a minimum of twenty one (21) days and a maximum of forty eight (48) days after the date of filing the appeal. After a hearing at which the appellant may be present, the appellate body may affirm, reverse, or modify its decision.
- 3) **Criteria For Review Of An Appeal.** In the written notice of appeal, the appellant must substantiate the following:
 - a. Identify the explicit provisions which are in dispute.
 - b. Show that the decision being appealed is incorrect because of one or more of the following:
 - (1) It was against the express language of the *Land Use and Development Code*, or
 - (2) It was against the express intent of the *Land Use and Development Code*, or
 - (3) It is unreasonable, or

- (4) It is erroneous, or
 - (5) It is clearly contrary to law.
 - c. Identify the benefits and adverse impacts created by the decision, describe the distribution of the benefits and impacts between the community and the appellant, and show that the burdens placed on the appellant outweigh the benefits accrued by the community.
- 4) **Stays of Decisions.** A perfected appeal shall operate as a stay of the decision being appealed unless the Director or City Manager certifies in writing that a stay would cause or result in an imminent hazard to the public health, safety, and welfare or the violation is of such a short term nature that by the time an appeal hearing is held, the violation will have been terminated or moved to another site. The time frame in which violations of this nature operate is such that a stay of proceedings will make the enforcement process ineffective. Examples of short term violations include, but are not limited to, temporary vendors, promotional events, and temporary signs.
- 5) **Fees.** Any person pursuing an appeal shall pay such fees therefore adopted in the Annual Fee Resolution and for the completion of all forms which may be prescribed by the Director. Failure to pay any required fee or to properly complete any required form shall be deemed a waiver of the right to appeal.

I. LIMITATION ON FURTHER APPLICATION. Whenever a change of zone, a conditional use, a special use or variance has been finally disapproved by the Planning Commission or City Council, no further application shall be made for the same change of zone, conditional use, special use or variance, affecting the same property, or a part thereof, for a period of twelve (12) months from the date of the final action of disapproval. The applicant for said change of zone, conditional use, special use or variance, may apply to the Director for an exception to this limitation by specifying and showing that because of a change of circumstances, the existing zoning precludes the use of the property for any purpose to which it may be reasonably adapted, and that because of a change in circumstances, the landowner is deprived of all reasonable uses of the land and that the land is not susceptible to any reasonable use under the existing zoning. Any decision by the Manager may be appealed to the Planning Commission.

4. **Annexation.** (Section 17-8-40 of the Brighton Municipal Code)

All annexations of unincorporated territory to the City shall comply with the requirements and procedures set forth in the Municipal Annexation Act, Colorado Revised Statutes 1973, Title 31, Article 12, Part 1 (C.R.S. ' 31-12-101 et seq.), as amended. The City Council shall annually review its policy regarding annexation so that staff and the public are apprised of the City Council's willingness to consider annexation of land into the City. Such policy shall address annexation of vacant and improved land.

A. Approval Criteria. All annexations shall be reviewed for compliance with the following criteria. However, annexation is a discretionary, legislative act. The City shall never be compelled to annex, unless otherwise required by state law, even if all these approval criteria have been satisfied.

- 1) The annexation is in compliance with the Municipal Annexation Act of 1965 (C.R.S. ' 31-12-101 et seq., as amended),
- 2) The annexation is in accord with the Comprehensive Plan and other master plans of the City, and the best interests of the City would be served by annexation of

- such property,
- 3) The property is capable of being integrated into the City and developed in compliance with all applicable provisions of the Brighton Municipal Code,
 - 4) Municipal and governmental services and facilities will be extended to such areas which form a part of the whole City,
 - 5) At the time any development of the area proposed to be annexed is completed, there will be capacity to adequately serve residents of such area with all necessary utilities and facilities, and
 - 6) The annexation will encourage well-ordered development of the City.
- B. **Pre-Petition Conference.** A pre-application conference may be required to discuss eligibility for annexation, compliance with the criteria for annexation, zoning of the property after annexation, development plans, terms of the annexation and development agreements, and other matters related to the annexation. The proposed annexation may be referred to the Development Review Committee and other agencies and departments as provided in subsection 17-8-30(D) above to obtain comments and suggestions therefrom. Should the proposed annexation be referred, the Director shall inform the applicant or petitioner thereof and to comments and suggestions received.
- C. **Petitions and Submittals.** In addition to all state statutory filing and procedural requirements, all petitions for annexation and annexation plats shall be submitted to the Director, with such submittals as required including:
- 1) A completed **Land Use and Development Application** as provided in subsection 17-8-30(C)(1) above,
 - 2) A completed **Questionnaire**, as provided in subsection 17-8-30(C)(2) above,
 - 3) The **Fees** as provided in subsection 17-8-30(C)(3) above,
 - 4) An **ALTA/ACSM Land Title Survey** as provided in subsection 17-8-30(C)(8) above,
 - 5) An **Annexation Plat** as provided in subsection 17-8-30(C)(19) above,
 - 6) A **Vicinity Map** as provided in subsection 17-8-30(C)(20) above,
 - 7) Copies of all agreements between the petitioner/applicant and governmental entities, quasi-public entities and special districts that may affect the petitioner/applicant's property, addressing such things as access, water, sanitary sewer, and stormwater,
 - 8) Private agreements addressing topics subject to governmental approval, such as utilities, and oil and gas operations,
 - 9) Proposed zoning for the annexed property,
 - 10) Terms for proposed Annexation Agreement and
 - 11) Any other submittal items as required by the Director.
- D. **Notice.** Notice of annexation shall be as set forth in the Municipal Annexation Act, Colorado Revised Statutes 1973, Title 31, Article 12, Part 1 (C.R.S. ' 31-12-108 et seq.). as amended.
- E. **Annexation Agreement.** Except as to a unilateral annexation or annexation upon election, the requirements of this Section 17-8-40, and any additional requirements determined by the City Council shall be contained in a written Annexation Agreement to be executed by the landowner and developer, if applicable. The annexation agreement shall be approved by the City Council prior to the final reading of the annexation ordinance.
- F. **City Council.** The City Council shall hold a public hearing on the annexation after notice is given as provided in subsection 17-8-40(D) above. In taking action to approve, deny or table the annexation for future consideration, the City Council shall consider any comments

received from reviewing agencies, the staff, and any comments from citizens. The Council shall also consider if the proposed annexation meets the following criteria:

- 1) The proposed annexation is in conformance with the City's Comprehensive Plan and other master plans;
- 2) The annexation meets the criteria set forth in Section 17-8-40(A) above,
- 3) The proposed annexation promotes geographical balance of the City's land use pattern;
- 4) Adequate services are or will be available to support the development expected to result from the proposed annexation;
- 5) The proposed annexation provides for a continual and rational boundary; and
- 6) The proposed annexation is needed to accommodate future land use requirements.

G. **Recording.** If the annexation is approved, the Director shall cause a copy of the annexation ordinance, annexation plat and annexation agreement (if applicable) to be recorded in the appropriate county clerk and recorder's office. The petitioner/applicant shall pay all required recording fees.

5. **Special Use and Variance.** (Section 17-8-50 of the Brighton Municipal Code)

A special use is a non-permanent use of land, structures, or both, approved by the Board of Adjustment. A variance is a permanent departure from the *Land Use and Development Code*, except use variances shall not be granted for uses contrary to the uses set forth in Section 4.18 of the Zoning Regulations, "Table of Uses." Variances are approved by the Board of Adjustment in accordance with the provisions of this Section 17-8-50. Notices for special uses and variances shall be as provided for in subsections F.(2)(3)(4) of Section 17-8-30.

A. **Time Limits.** Unless otherwise stated in the motion of the Board of Adjustment, all special use permits shall be valid for a period not to exceed five (5) years from the time the special use is granted. The Board of Adjustment may approve a special use with terms, conditions and restrictions deemed necessary by the Board of Adjustment for the protection of the health, safety, and welfare of the public. The construction, alteration, or repair of a structure or building shall be commenced within six (6) months from the time the variance or special use permit is issued. Failure to do so shall be considered abandonment of the variance or special use and which may thereafter be cancelled by the Director.

B. **Security.** In granting a variance or special use permit, the Board shall have the power to require reasonable assurance that the terms, conditions and restrictions of the variance or special use permit will be performed. Such assurance may be in the form of surety and/or performance bond, or otherwise, at the discretion of the Board. The provisions of Section VII. Non-Conforming Uses and Structures as the same relate to the regulation and authorization of non-conforming uses and structures shall apply to the continuance of any variance or special use granted pursuant to this section.

C. **Applications for Special Uses and Variances.** An application for a special use or variance shall be made in accordance with subsections 17-8-30(B),(C) & (E) above.

D. **Processing and Review Procedure.** The procedure and review for each special use or variance request in accordance with Section 17-8-30 above.

E. **Criteria for a Variance.** The Board of Adjustment may grant a variance based upon the finding of an "unnecessary hardship." The Board of Adjustment, when granting a variance based on the grounds of unnecessary hardship, must find that application of the Code would:

- 1) Neither be detrimental to the public good nor authorize any change in use other

- than to a use that is allowed subject to Article 17-32, Table of Uses,
- 2) By reason of exceptional physical conditions or other extraordinary and exceptional situations unique to such property, including, but not limited to, physical conditions such as exceptional narrowness, shallowness or topography, or physical conditions which hinder the owner's ability to legally use or construct upon the property, the strict application of the standard sought to be varied would result in unusual and exceptional practical difficulties. Generally, the uniqueness of the property causes the plight, not the uniqueness of the situation of the owner.
 - 3) The proposal as submitted will promote the general purpose of the standard for which the variance is requested equally well or better than would a proposal which complies with the standard for which the variance is requested; or
 - 4) The proposal as submitted will not diverge from the standards of the *Land Use and Development Code* that are authorized by this Section 17-8-50 to be varied except in a nominal, inconsequential way when considered in the context of the neighborhood, and will continue to advance the purposes of the *Land Use and Development Code*.
 - 5) Any finding made under subparagraphs (1), (2), (3) and (4) above shall be supported by specific findings showing how the proposal, as submitted, meets the requirements and criteria of said subparagraphs.

F. Criteria for a Special Use. The Board of Adjustment shall consider the following criteria when making a determination as to approval or denial of a special use permit:

- 1) Whether the proposed use is compatible with the surrounding area;
- 2) Whether the proposed use will have a negative effect in terms of: noise, fumes or air quality, and light on the surrounding area;
- 3) Whether the proposed use will have a negative effect by lessening peace, quiet and privacy in the surrounding area;
- 4) Whether the proposed use will result in an increased need for fire and police protection;
- 5) Whether the site is properly designed in terms of landscaping, parking, setbacks, building elevations, building materials, floor/area ratio, and open space;
- 6) Whether existing public facilities are adequate for the proposed use;
- 7) Whether the existing and proposed streets are suitable and adequate to prevent congestion and adequately handle any anticipated increased traffic from the special use; and
- 8) Whether the proposed use is in conformity with the general intent of the Comprehensive Plan and master plans of the City.

G. Appeal. Final decisions of the Board of Adjustment may be appealed to the City Council in accordance with subsection 17-8-30(H) above.

6. Conditional Use. (Section 17-8-60 of the Brighton Municipal Code)

A conditional use is an additional use of land, structures or both that may be allowed with restrictions deemed necessary upon the review and approval of City Council. The conditional use is created in order to recognize that a use may be allowed within a zone district on a specific parcel of ground in an area if restrictions and/or conditions are placed upon such use in order to ensure that such use is compatible with the area in which it is intended to be located. The resolution approving the conditional use shall set forth whether the conditional use approval shall run with the land or is limited to the continued conditional use of the property by the applicant. If

the resolution fails to so provide, the approval shall be limited to the continued use of the property by the applicant. Notices for conditional uses shall be as provided for in subsections F.(2)(3)(4) of Section 17-8-30.

A. **Application.** An application shall be submitted and subject to Section 17-8-30 above.

B. **Criteria for Conditional Use.** The City Council in making its decision shall determine if a conditional use:

- 1) Complies with the requirements of these regulations, and with the zone district in which it is to be located;
- 2). Provides consistency with the purpose and intent of these regulations;
- 3) Provides compatibility with surrounding areas, is harmonious with the character of the neighborhood, is not detrimental to the immediate area, is not detrimental to the future development of the area, and is not detrimental to the health, safety, or welfare of the inhabitants of the City;
- 4) Complies with the Comprehensive Plan and other master plans of the City; and
- 5) Requires restrictions or conditions upon approval.
- 6) The following should be considered in the decision in addition to any other criteria deemed relevant to the particular use requested:
 - a. Hours of operation;
 - b. Street and road capacity;
 - c. Off-street parking;
 - d. Fencing, screening, and landscaping;
 - e. Building bulk, height, setback, location and external appearance;
 - f. Usable open space;
 - g. Signs and lighting; and
 - h. Noise, vibration, air pollution, or similar environmental considerations.

7. **Sexually Oriented Business.** (Section 17-8-70 of the Brighton Municipal Code)

No Conditional Use for a sexually oriented business shall be approved for a location within five hundred (500) feet of another sexually oriented business, educational institution, daycare center, park, house of worship or residentially zoned or residentially used property (whether within or outside the City boundaries). The five hundred (500) feet separation measurement shall be made in a straight line without regard to intervening structures or objects from the nearest property line of the proposed sexually oriented business to the nearest property line of another sexually oriented business, educational institution, daycare center, park, house of worship or residentially zoned or residentially used property.

8. **Zone Changes.** (Section 17-8-80 of the Brighton Municipal Code)

Changes to the zoning of particular parcels of property or changes to zone district boundaries may be initiated by the Director, City Manager, Planning Commission, City Council, or by the owners of the property, or lessees with the written agreement of the owners of the property, persons who have contracted to purchase the property contingent upon their ability to acquire the necessary permits, or the agents or representatives of such persons.

A. **City Initiated.** When zone changes are initiated by the Director, City Manager, Planning Commission, or the City Council, the owner(s) of record of the property proposed to be rezoned shall be notified by certified mail sent at least thirty (30) calendar days prior to the Planning Commission public hearing. In addition, the Director shall cause notification thereof to be made in accordance with subsections 17-8-30. (F)(2) **Publication-Notice** and (4) **Posting of Property.** The required notice to the owner(s) of record and the notifications

- shall contain a description of the property proposed to be rezoned in sufficient detail to reasonably identify the property, the proposed change of zoning, other appropriate information as to the purpose of the hearing, and the date, time, and location of the public hearing.
- B. **Application for Zone Change.** The owner(s) of record and/or an applicant officially representing the owner(s), may request a zone change in accordance with Article 17-8-30 above. Notices for an application for a zone change by the owner(s) of record and/or an applicant officially representing the owner(s), shall be as provided for in subsections F.(2)(3)(4) of Section 17-8-30.
 - C. **Planning Commission.** The Planning Commission shall conduct a public hearing at the time, date, and place as published and posted, to consider all relevant evidence concerning the proposed change of zoning. After consideration of such evidence, the Planning Commission shall by resolution to the City Council, recommend approval, disapproval or approval with conditions. The Planning Commission may take the request under advisement as provided in subsection 17-8-30(G) above.
 - D. **City Council.** Following action by the Planning Commission, the rezoning request shall be set for a public hearing by the City Council. The City Council public hearing shall be conducted in accordance with subsection 17-8-30(G) above. Once a date of the City Council public hearing has been set, notice thereof shall be sent to the owner(s) of record, published and posted as provided in subsections 17-8-30(F) above.
 - E. **Criteria for Rezoning.** The Planning Commission in making its recommendation, and the City Council in making its decision, shall determine if a rezoning:
 - 1) Complies with the Comprehensive Plan, and other master plans of the City;
 - 2) Complies with the requirements of the *Land Use and Development Code*, and with the zone district;
 - 3) Provides consistency with the purpose and intent of the *Land Use and Development Code*; and
 - 4) Provides compatibility with surrounding areas, is harmonious with the character of the neighborhood, is not detrimental to the immediate area, the future development of the area, or the health, safety, or welfare of the inhabitants of the City.
 - F. **Recording.** The Director shall record a copy of the ordinance approving the zone change in the office of the appropriate county clerk and recorder. The applicant shall pay all required recording fees.
9. **Amendments to Zoning Regulations.** (Section 17-8-90 of the Brighton Municipal Code)
The purpose of this Section 17-8-90 is to provide procedures and criteria for additions, changes and/or amendments to the zoning regulations contained in Sections I through VII of this *Land Use and Development Code*.
- A. **Amendments To The Text Of The Zoning Regulations.** Amendments to the text of the zoning regulations may be initiated by the Director, City Manager, Planning Commission, or the City Council.
 - B. **Reviewing Authorities and Procedures.** An addition, change or amendment to the zoning regulations shall be reviewed by the reviewing authorities as set forth in section 17-8-20 and shall be reviewed at a public hearing in accord with subsection 17-8-30(G). The Planning Commission may recommend approval or rejection of the proposed addition, change or amendment to the City Council which may refer back to the Planning Commission for further consideration.

C. **Notice** of the public hearings shall be as provided for in subsection F.(2) of Section 17-8-30.

10. **Use-by-Right.** (Section 17-8-100 of the Brighton Municipal Code)

A Use-by-Right is the use of land, structures or both which is authorized by the existing zoning classification without need for review by the Planning Commission or City Council. Such projects do not require approval through the public hearing process, but are reviewed and approved administratively by the Director. The Director, in the Director's sole discretion, may refer the application in accordance with subsection 17-8-30(D) for review and comment. Uses-by-Right may be within commercial, industrial or residential zoning districts, but such reviews shall not include single family homes or duplexes, fences, residential garages, or sheds.

A. **Application for Use-by-Right Approval.** Application for use-by-right approval may be initiated by the owners of the property, or lessees with the written agreement of the owners of the property, persons who have contracted to purchase the property contingent upon their ability to acquire the necessary permits, or the agents or representatives of such persons and shall be in accordance with subsection 17-8-30(B) above.

B. **Criteria for Use-by-Right.** The Director may grant an application for use-by-right that meets the following criteria:

- 1) The proposed use complies with the requirements of these regulations, and with the zone district in which it is to be located, and
- 2) The proposed use is consistent with the purpose and intent of the *Land Use and Development Code*.

C. **Expiration and Extension of Use-by-Right Approval.** Approved use-by-right plans shall be valid for one (1) year from the date of the approval. If a building permit is issued for the development within the one (1) year period, the approval of the use-by-right plans shall remain in full force and effect until a certificate of occupancy is issued or the building permit expires. The one (1) year term of use-by-right approval may be extended by the Director, provided that a written request has been received prior to the expiration of the initial one (1) year term of approval. In making a determination of extension approval, the Director shall determine whether or not major changes in the City's development standards, or changes in the development pattern of the site or surrounding properties has occurred. The approval time period for an extension shall be determined by the Director, after reasonable consideration of the aforementioned criteria and shall be documented in writing, referred to the applicant, and placed within the permanent case file. In no event shall an approved use-by-right plan be extended for more than three (3) years from the original date of approval.

D. **Appeal.** The denial of an application for a use-by-right, or the denial of an extension of approval by the Director, may be appealed to the Planning Commission, in accordance with subsection 17-8-30(H) above.

11. **Tenant Finish.** (Section 17-8-110 of the Brighton Municipal Code)

Tenant Finish consists of the construction, or the operation of a new business, or a business that is changing location, that primarily involves interior remodeling, but which may include minor alterations to the exterior (e.g., painting, addition of a parapet, etc.), which is authorized by the existing zoning classification. Tenant Finish applications for commercial, public, governmental or industrial related construction or business shall be reviewed and approved administratively by Director; however, if improvements are made to the site, including, but not limited to, an increase in paved areas (i.e., impervious areas), changes to existing grade, or minor additions to existing structures, the Director may require a Use-by-Right review as set forth in Section 17-8-100 above or a Site Improvement review as set forth in Section 17-8-130 below.

- A. **Application.** Application for tenant finish approval may be initiated by the owners of the property, or lessees with the written agreement of the owners of the property, persons who have contracted to purchase the property contingent upon their ability to acquire the necessary permits, or the agents or representatives of such persons and shall be in accordance with subsection 17-8-30(B) above.
- B. **Processing and Review Procedure.** In addition to the administrative procedures set forth in subsections 17-8-30(C), (D), and (E), above, the following procedure will be followed for each tenant finish request.
 - 1) **Site Check.** The Director shall perform a site check of the property to insure the following:
 - a. Off-street parking areas and sidewalks are adequate to serve the proposed use and are in proper condition (i.e., paved, striped, handicap spaces are in place);
 - b. Required landscape areas are landscaped with the proper materials and are in good condition;
 - c. The building interior and exterior is in good condition and conforms to all applicable Building and Fire Codes in effect at the time of application.
- C. **Criteria for Tenant Finish Approval.** An application for tenant finish will be approved as long as the items as set forth in subsection B above have been adequately addressed. If there are any outstanding items, the application shall be denied and the Director shall notify the applicant of the changes necessary to achieve compliance with these standards. If the applicant disagrees with the Director's requested changes or denial, the applicant may appeal the Director's decision to the Board of Adjustment in accordance with subsection 17-8-30(H) above.

12. **Temporary Uses.** (Section 17-8-120 of the Brighton Municipal Code)

The Temporary Use permit process is intended to allow uses of a temporary nature to exist for a specified length of time in a manner which will not adversely impact the general welfare of persons residing in the community. A Temporary Use permit shall be required for all uses listed in Section 4.18 of the Zoning Regulations, Table of Uses.

- A. **Application for Temporary Use Permit.** Application for a temporary use permit may be initiated by the owners of the property, or lessees with the written agreement of the owners of the property, persons who have contracted to purchase the property contingent upon their ability to acquire the necessary permits, or the agents or representatives of such persons and shall be in accordance with subsection 17-8-30(B) above. The application for a temporary use permit shall be submitted to the Community Development Department at least ten (10) days prior to the desired issuance date. The Director, with the review and comment of the Chief Building Official, may impose conditions and requirements including bonding, and insurance protection necessary for the health, safety, and welfare of the citizens and the surrounding area. Such temporary permit shall be for a specific period of time, not to exceed ninety (90) calendar days, as determined by the Director and the Chief Building Official. Temporary construction and sales offices for subdivisions, and other similar uses that will exceed the ninety (90) day time limit shall be specifically addressed in the Development Agreement for that subdivision. If the applicant of the temporary use permit should require additional time beyond the original ninety (90) day time limit, the applicant shall submit a new application and filing fee. Any request for additional uses, or additional time beyond what had been previously approved shall be approved by the Director, with the review and

comment of the Chief Building Official. If the Director denies the applicant's request for a temporary use permit or extension thereof, the applicant may appeal the decision to the Board of Adjustment, in accordance with subsection 17-8-30(H) above.

- B. **Restrictions.** Setback and other requirements of the zone district in which the temporary use is located shall apply to buildings and structures connected with such temporary use; and such buildings and structures shall be constructed as to be structurally sound and compatible to neighboring properties.
- C. **Temporary Uses.** The below listed temporary uses are by way of example and not by way of limitation:
 - 1) Temporary construction yard, building, or fencing for construction materials and equipment, including mobile home for office use, and other facilities necessary for construction in a zone district; temporary office and signs incidental and necessary for the sale of new construction by permittee; temporary clean landfills; and others as listed in Section 4.18 of the Zoning Regulations, Table of Uses, or that are compatible and not detrimental to an area, as determined by the Director.
 - 2) Uses such as auctions (indoor or outdoor; including livestock or not including livestock); automobile sales; carnivals, circuses, fairs, festivals, and/or rodeos; farmer's markets; fireworks stands; flea markets; large vehicle sales; theatre productions; and other temporary sales stands may be limited in regards to size and/or hours of operation as determined by the Director.
 - 3) **Fencing and Screening of Outside Storage.** Areas used for storage of materials and/or equipment shall be completely fenced and a gate shall be provided. The Director may require temporary landscaping and appropriate screening if it is deemed necessary to provide compatibility with the surrounding area.
 - 4) **Maintenance of Temporary Sales and/or Construction Offices and Surrounding Property.** Temporary sales and/or construction offices shall be kept neat and clean. Any storage around the exterior of the office or sales facilities shall be fenced and properly screened. If the applicant has been notified of violations of the Brighton Municipal Code (i.e., trash, weeds, etc.) more than two times within a one-year period, the temporary permit may be denied or revoked by the Director.
 - 5) **Application Fee Waiver.** The Director shall waive the application fee for a temporary use if such application is made by a governmental entity or a charitable, civic, or non-profit organization duly organized as such are determined by the Internal Revenue Service or the Department of Revenue of the State of Colorado.

13. **Site Improvement Permits.** (Section 17-8-130 of the Brighton Municipal Code)

Site Improvements consist of the construction (including structural and non-structural construction, like private utilities, paving, concrete flat work, etc.) of various property improvements, whether public or private, which may not otherwise be administered by a City of Brighton permit, but for which the Director has determined a permit is necessary for the protection of the public health, safety, welfare or the avoidance of a public nuisance. Such permit applications do not require approval through the public hearing process, but are reviewed and approved administratively by the Director. The Director, at the Director's sole discretion, may refer the application in accordance with subsection 17-8-30(D) for review and comment or may require a Use-by-Right review as set forth in Section 17-8-100 above. The requirement for a Site

Improvement permit may be waived at the sole discretion of the Director if a determination is made that construction does not cause, nor has the potential to cause, a public nuisance or negatively affect the public health, safety, or welfare. Proposed Site Improvements must be authorized by the existing zoning classification, as the Site Improvement permit does not grant a variance from or otherwise waive the applicability of any portion of the City Code and standards.

- A. **Application for Site Improvement Approval.** Application for a Site Improvement permit approval may be initiated by the owner of the property, or a lessee with the written agreement of the owner of the property, a person who has contracted to purchase the property contingent upon his ability to acquire the necessary permits, or the agents or representatives of such person, and shall be in accordance with subsection 17-8-30(B) above.
- B. **Processing and Review Procedure.** The administrative procedures set forth in subsections 17-8-30(C), (D), and (E), above will be followed for each Site Improvement permit application. The Director may grant a permit for Site Improvement that meets the following criteria:
 - 1) The proposed use complies with the requirements of these regulations, and with the zone district in which it is to be located; and,
 - 2) The proposed use is consistent with the purpose and intent of the *Land Use and Development Code*.
- C. **Criteria for Site Improvement Approval.** An application for a Site Improvement permit will be approved as long as the criteria as set forth in subsection B above have been adequately addressed. If there are any outstanding items, the application shall be denied and the Director shall notify the applicant of the changes necessary to achieve compliance with these standards. If the applicant disagrees with the Director's requested changes or denial, the applicant may appeal the Director's decision to the Board of Adjustment in accordance with subsection 17-8-30(H) above.
- D. **Expiration and Extension of Site Improvement Approval.** Approved Site Improvement applications shall be valid for a period of time not to exceed six (6) months from the date of the approval. The six (6) month term of Site Improvement approval may be extended for an additional (6) months by the Director, provided that a written request has been received prior to the expiration of the initial six (6) month term of approval, and the Director has determined that no major changes in the City's development standards, or changes in the development pattern of the site or surrounding properties has occurred. Once the Site Improvement permit has been issued, the permit will remain in active status if inspections for same are continuing. A permit with no inspection activity for a period of six (6) months becomes null and void.
- E. **Appeal.** The denial of an application for a Site Improvement permit by the Director may be appealed to the Board of Adjustment in accordance with subsection 17-8-30(H) above.
- F. **Enforcement.** The Director shall inspect the Site Improvements after completion of construction and may either approve the construction or require additional construction as required by the approved Site Improvement permit. Use or occupancy of the property including the Site Improvements may be restricted by the City until the Director has granted such approval.

14. **Interpretation.** (Section 17-8-140 of the Brighton Municipal Code)

In the interpretation and application of the *Land Use and Development Code*, the provisions of thereof shall be held to be minimum requirements adopted for the promotion of the public health,

safety, and welfare. Whenever the requirements of the *Land Use and Development Code* are at variance with the requirements of any other lawfully adopted rules, regulations, building codes, fire codes, or ordinances, the more restrictive, or that imposing the higher standards, shall govern. The purpose of this part is to provide for flexibility in the application of regulations when the application thereof is subject to differing interpretations or may be inapplicable or inappropriate to a specific use or design proposal or a minor problem arises with the strict application of the *Land Use and Development Code*, regulations and standards.

- A. **Authority.** The Director shall have the authority to make all interpretations of the text of this *Land Use and Development Code* and the boundaries of zone districts on the Zoning Map.
- B. **Request for Interpretation.** Request for interpretation may be initiated by any person in accordance with the procedures set forth in subsections 17-8-30(B)-(E) above.
- C. **Rendering of Interpretation.** The Director shall review and evaluate the request in light of the terms and provisions of this *Land Use and Development Code* and/or the Zoning Map, whichever is applicable, and render an interpretation. The Director may consult with the City Attorney and other City departments before rendering an interpretation.
- D. **Form.** The interpretation shall be in writing and shall be delivered to the applicant. Interpretations that are not in writing shall have no force or effect. Interpretations shall have no precedential value and shall be limited in their application to the property, if any, identified in the interpretation.
- E. **Official Record.** The Director shall maintain an official record of all interpretations in the records of the Community Development Department.
- F. **Appeal.** Appeals of any interpretation may be made to the Board of Adjustment in accordance with subsection 17-8-30(H) above.
- G. **Rules of Construction for Text.** In construing the language of the *Land Use and Development Code*, the rules set forth in Article 1-4. General Provisions of the Brighton Municipal Code and these subsections (G), (H) and (I) shall be observed unless such construction would be inconsistent with the manifest intent of the City Council as expressed in the *Land Use and Development Code*. The rules of construction and definitions set forth herein shall not be applied to any express provisions excluding such construction, or where the subject matter or context of such section is repugnant thereto. In the event of a conflict between these rules of construction and the rules of construction established in Article 1-4. General Provisions, these rules shall control.
- H. **Generally.** All provisions, terms, phrases and expressions contained in the *Land Use and Development Code* shall be so construed in order that the intent and meaning of the City Council may be fully carried out. In the interpretation and application of any provision of the *Land Use and Development Code*, such provision shall be held to be the minimum requirement adopted for the promotion of the public health, safety, comfort, convenience and general welfare. Where any provision of the *Land Use and Development Code* imposes greater restrictions upon the subject matter than another provision thereof, the provision imposing the greater restriction or regulation shall be deemed to be controlling. In other words, the more stringent controls over the less stringent.
- I. **Definitions.** The following definitions are intended to be generally construed within the context of the *Land Use and Development Code*, except as shall be specified by the term itself within a given context for a select section thereof.
 - 1) **Text.** In case of any difference of meaning or implication between the text of the *Land Use and Development Code* and any figure or diagram, the text shall control.
 - 2) **Conjunctive/Disjunctive.** Unless the context clearly indicates the contrary, the

following words shall be interpreted as follows:

- (a) **"And"** indicates that all connected words or provisions apply.
- (b) **"Or" or "and/or"** indicates that the connected words or provisions may apply singly or in any combinations.
- (c) **"Either...or"** indicates that the connected words or provisions apply singly but not in combination.
- 3) **Day.** The word "day" shall mean a calendar day.
- 4) **Delegation of Authority.** Whenever a provision appears requiring the Director or some other City officer or employee to do some act or perform some duty, such provision shall be construed as authorizing the Director or other officer or employee to designate, delegate and authorize other City officers, directors, or employees to perform the required act or duty unless the terms of the provision specify otherwise.
- 5) **Include.** The word "including," "includes," "such as," "additional" or "supplemental" is illustrative and is not intended as an exhaustive listing, unless the context clearly indicates the contrary.
- 6) **Headings.** Article, division, section and subsection headings contained in the *Land Use and Development Code* are for convenience only and do not govern, limit, modify or in any manner affect the scope, meaning or intent of any portion of thereof.
- 7) **Shall, May, Should.** The word "shall," "will" or "must" is mandatory; "may" is permissive, "should" is suggestive but not mandatory.

15. **Administrative Relief.** The purpose of this part is to provide for flexibility in the application of regulations when a standard is inapplicable or inappropriate to a specific use or design proposal or a minor problem arises with the strict application of development standards. In the interpretation and application of the *Land Use and Development Code*, the provisions of the *Land Use and Development Code* shall be held to be minimum requirements adopted for the promotion of the public health, safety, and welfare. Whenever the requirements of the *Land Use and Development Code* are at variance with the requirements of any other lawfully adopted rules, regulations, building codes, fire codes, or ordinances, the more restrictive, or that imposing the higher standards, shall govern.

A. **Application.** An application for administrative relief may be filed in conjunction with a development proposal such as a development plan or a building permit site plan and filed in a manner consistent with the requirements contained in subsection 17-8-30(B)-(E) above.

B. **Findings Necessary to Grant Administrative Relief.** The Director may grant administrative relief, if all of the following criteria are met:

- 1) The strict application of the regulation in question is unreasonable given the development proposal or the measures proposed by the applicant or that the property has extraordinary or exceptional physical conditions that do not generally exist in nearby properties in the same zoning district and such conditions will not allow a reasonable use of the property in its current zone in the absence of relief.
- 2) The intent of the *Land Use and Development Code* and the specific regulation in question is preserved.
- 3) The granting of the administrative relief will not result in an adverse impact on surrounding properties.
- 4) The granting of the administrative relief will not allow an increase in the number

of dwelling units on a parcel. Administrative relief shall not be used to create or modify lots to the extent that they no longer meet the minimum lot size for the zone district in which they are located.

- C. **Relief.** Administrative relief may be granted for any quantifiable development standard of the *Land Use and Development Code* provided that the relief shall not exceed five per cent (5%) of the standard. In cases where administrative relief is granted for properties subject to an approved development plan, the applicant shall be required to process an amendment to the development plan to reflect the site conditions modified through the administrative relief approval.
- D. **Specific Relief In Specified Zone Districts.** Administrative relief may be granted in any zone district, including Planned Unit Developments (PUD's), as follows:
 - 1) Residential Zone Districts or Residential PUD's:
 - a. Minimum Building Setbacks,
 - b. Maximum Building Height, and
 - c. Building Areas.
 - 2) All other Zone Districts or PUD's:
 - a. Minimum Building Setbacks,
 - b. Maximum Building Height,
 - c. Building Areas, and
 - d. Minimum Number of Required Off-Street Parking Spaces.
- E. **Public Notice.** Public notice for administrative relief applications may include posting, mailed public notification and neighborhood meetings at the discretion of the Director as provided in subsection 17-8-30(F) above.
- F. **Appeal.** A decision regarding administrative relief may be appealed to the Planning Commission in accordance with subsection 17-8-30(H) above.

16. **Violations/Penalties.** (Section 17-8-160 of the Brighton Municipal Code)

- A. It shall be unlawful for any person, including but not limited to owner, tenant, occupant, firm, corporation, partnership, joint venture and the principal, partners, officers, employees, agents and representatives thereof to do or perform, or cause to be:
 - 1) Done or performed, any act or thing prohibited by the terms of the *Land Use and Development Code*, as the same may be amended from time to time, or prohibited by any conditional approvals, lawful orders or regulations issued pursuant to any of the provisions thereof; or
 - 2) Omitted or not performed any act or thing required to be done by the *Land Use and Development Code*, as the same may be amended from time to time, or any conditional approval, lawful regulation or order issued under any of the provisions thereof; or
 - 3) Interferes in any manner with any person in the performance of a right or duty granted or imposed upon him by the provisions of the *Land Use and Development Code*.
- B. If any person, including but not limited to owners, occupants, tenants, the officers, agents, employees, and representatives of a corporation responsible for its actions or inaction, and the partners, or members of a partnership, firm or joint venture, shall violate or cause the violation of any of *Land Use and Development Code*, as the same may be amended from time to time, they and each of them shall be guilty of a separate offense for each and every day or portion thereof during which a violation is committed, permitted, or continues. Upon conviction thereof, any person including but not limited to such owners, occupants, tenants,

- partners, members, officers, agents or representatives, shall be subject only to the penalties provided for in Section 1-24, General Penalties, of the Brighton Municipal Code, as the same may be amended from time to time.
- C. If any person violates any provision or fails to comply with any of the requirements of the *Land Use and Development Code*, the City may seek a preliminary or permanent injunction in a court of competent jurisdiction restraining the person from continuing the violation, activities which would create further violations or compelling abatement or remediation of the violation.
 - D. The regulations, standards, and provisions of the *Land Use and Development Code* may be enforced by withholding related building permits, suspending or revoking building permits previously granted, or issuing stop work orders effective until violations have been corrected.
 - E. The remedies above are not exclusive of any other remedies available under any applicable federal, state or local law and it is within the discretion of the City to seek alternative and/or cumulative sanctions or remedies.